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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

AARON GREENSPAN,

Plaintiff,

v.

OMAR QAZI, SMICK ENTERPRISES, INC.,
ELON MUSK, and TESLA, INC.,

Defendants.

Case No. 3:20-cv-03426-JD

**PLAINTIFF'S MOTION FOR
COSTS AND EXPENSES
PURSUANT TO FEDERAL RULE
OF CIVIL PROCEDURE 4(d)(2)
FOR SERVICE ON ELON MUSK**

Judge: Hon. James Donato
Complaint Filed: May 20, 2020

Plaintiff, Aaron Greenspan, respectfully asks the Court to enter an Order pursuant to Federal Rule of Civil Procedure 4(d)(2) against Elon Musk and in favor of Plaintiff for recovery of reasonable costs and expenses incurred to Plaintiff due to Defendant Musk's failure to waive service in this matter. Rule 4(d)(2) states, "If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant: (A) the expenses later incurred in making service; and (B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses."

On May 20, 2020, Plaintiff filed the Complaint in this case electronically, taking advantage of the Court's waiver of Civil Local Rule 5-1(b) pursuant to General Order 72-2. A case number was generated and provided to Plaintiff by the Clerk of Court via e-mail the following morning, on May 21, 2020.

As soon as Plaintiff was informed of the case number, on May 21, 2020, Plaintiff e-mailed the defendants in the case with a link to the case docket and documents for their convenience, and followed up with individual e-mails to each defendant containing waiver of service documents pursuant to Federal Rule of Civil Procedure 4(d)(1) and supplemental documents pursuant to Civil Local Rule 4-2. *See* Exhibit A. Plaintiff had already exchanged e-mails in the past with two of the defendants (Omar Qazi and Elon Musk) and accordingly knew their e-mail addresses to be correct and functional.¹ Plaintiff e-mailed Tesla, Inc. Acting General Counsel Al Prescott regarding the waiver documents for Defendant Tesla, Inc., and knew his e-mail address to be correct and functional based on prior responses to public records requests.

Numerous courts have held that e-mail is a “reliable means” and a costless method by which to send a request for waiver of service. For example,

“Defendants do not dispute that the email received on December 3, 2013 that attached the complaint ‘could be considered ‘reliable means’ of service within the meaning of Rule 4. Docket No. 15 at 9; *see also* Fed. R. Civ. P. 4, advisory committee’s note to 1993 amendments, 146 F.R.D. 401, 563 (‘While private messenger services or electronic communications may be more expensive than the mail, they may be equally reliable and on occasion more convenient to the parties.’); Hon. William W. Schwarzer et al., Prac. Guide Fed. Civ. Proc. Before Trial (Nat Ed.) Ch. 5-E, § 5:124 (‘other reliable means’ includes ‘overnight delivery service, facsimile, e-mail or private messengers’).”

SecurityNational Mortgage Company v. Head, Case No. 1:13-cv-03020-PAB-BNB (D. Colorado, September 15, 2014). Additionally,

“The advisory committee that drafted this portion of Rule 4 stated ‘private messenger services or electronic communications . . . may be equally reliable’ as first-class mail. 1993 Advisory Committee Notes to Rule 4. ‘In the decades since the 1993 Advisory Committee Notes were drafted, other forms of electronic communication—such as email—have become more prevalent and have been used effectively to send waiver requests under Rule 4(d).’ 4A Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1092.1 (4th ed.). There is simply no indication that e-mail or FedEx are unreliable methods of transmitting a waiver request.”

Equity Partners HG, LLC et al v. Samson, Inc. et al, Case No. 5:18-cv-05006-JLV (D. South Dakota, September 30, 2019).

¹ Defendant Qazi is an officer of Defendant Smick Enterprises, Inc.

Defendants had until June 20, 2020 to respond with their signed waiver forms. All defendants aside from Elon Musk were ultimately served personally prior to that date, rendering the waiver issue moot in each of their respective cases. Yet even after receiving a polite reminder e-mail on June 19, 2020, Defendant Musk failed to respond by 11:59 P.M. on June 20, 2020 (or thereafter). On June 22, 2020, Plaintiff engaged Michelson Attorney Service in Los Angeles to serve Defendant Musk personally. Service was effected on June 23, 2020 at one of Defendant Musk's homes on Somera Road in Los Angeles. *See* ECF No. 13.

Elon Musk is an individual who at the time of service was located in Los Angeles County, California, in the United States. Defendant Musk failed and refused, without good cause,² to sign and return the waiver of service as requested by Plaintiff pursuant to Federal Rule of Civil Procedure 4(d)(1). Pursuant to Federal Rule of Civil Procedure 4(d)(2), Plaintiff is entitled to the expenses incurred in serving Defendant Musk, and for reasonable expenses associated with the Motion to collect those expenses.

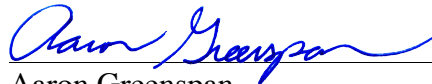
The attached invoices from Michelson Attorney Service and FedEx Office demonstrate that Plaintiff incurred expenses of \$927.93 associated with the service of Defendant Musk due to his refusal to waive service.³ *See* Exhibit B. Serving this Motion via First Class Mail, as no appearances have yet been entered via CM/ECF, will cost \$2.40 for postage and envelopes. Accordingly, Plaintiff respectfully asks the Court to enter an Order awarding Plaintiff the amount

² Defendant Musk is a serial defendant with ample legal counsel who is more than familiar with the steps for waiving service of process. He has waived service before in this Court repeatedly. *See* Case No. 3:18-cv-04865-EMC, Document 13; Case No. 5:18-cv-07110-BLF, Document 9; Case No. 3:18-cv-05463-VC, Document 11; etc. There is no good reason why Defendant Musk could not have similarly waived service in this case.

³ Defendant Musk owns at least five homes in Los Angeles, excluding one that was recently sold, and process servers charge on a per-address basis for each address attempted. In addition, Michelson Attorney Service offered to print the 324 pages necessary at a rate of \$0.35 per page for a total of \$113.40. Instead, Plaintiff printed the packet of documents remotely at FedEx Office for a total of \$28.93, saving \$84.47. Michelson Attorney Service initially charged but later refunded \$30.00 for "copies," not realizing that FedEx Office had been pre-paid, rendering a total charge of \$929.00 as reported on the Proof of Service document, instead of the final amount of \$899.00. Plaintiff seeks an award of \$899.00 plus \$28.93 plus \$2.40 for postage and envelopes to serve this Motion via First Class Mail, or \$930.33 total.

1 of \$930.33, as demonstrated in the attached exhibits, to be paid by Defendant Musk within ten
2 (10) days of the entry of the Court's Order on this Motion.

3
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5 Dated: June 25, 2020

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7 

8 Aaron Greenspan
9 956 Carolina Street
10 San Francisco, CA 94107-3337
11 Phone: +1 415 670 9350
12 Fax: +1 415 373 3959
13 E-Mail: aaron.greenspan@plainsite.org
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CERTIFICATE OF SERVICE

The undersigned certifies that on June 25, 2020, he caused this **PLAINTIFF'S**
MOTION FOR COSTS AND EXPENSES PURSUANT TO FEDERAL RULE OF CIVIL
PROCEDURE 4(d)(2) FOR SERVICE ON ELON MUSK to be served via First Class Mail
by depositing this document, postage pre-paid, in a mailbox addressed to:

Candace Jackman
Tesla, Inc.
6800 Dumbarton Circle
Fremont, CA 94555-3646
Counsel for Elon Musk and Tesla, Inc.

Omar Qazi
2625 Hyde Street
San Francisco, CA 94109
Defendant and Officer of Defendant Smick Enterprises, Inc.

I declare under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct. Executed on June 25, 2020.

Dated: June 25, 2020

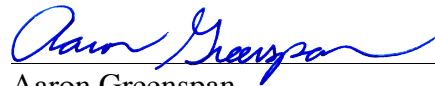

Aaron Greenspan

EXHIBIT A

E-Mail Messages Sent by Plaintiff Aaron Greenspan to Defendant Elon Musk
Concerning Waiver of Service

Subject: Waiver of Service

From: Aaron Greenspan <aaron.greenspan@plainsite.org>

Date: 5/21/20, 8:55 AM

To: Omar Qazi <omar@smick.com>, Elon Musk <erm@tesla.com>, Al Prescott <aprescott@tesla.com>

All,

Please see the lawsuit I have filed against you at:

<https://www.plainsite.org/dockets/49sdnba14/california-northern-district-court/greenspan-v-qazi-et-al/>

For the sake of efficiency, let me know if you would be willing to wave formal service of process.

Thank you,

Aaron

PlainSite I <https://www.plainsite.org>

Subject: Waiver of Service Form

From: Aaron Greenspan <aaron.greenspan@plainsite.org>

Date: 5/21/20, 10:22 AM

To: Elon Musk <erm@tesla.com>

CC: Al Prescott <aprescott@tesla.com>

Attachments available until Jun 20, 2020

May 21, 2020

Elon Musk
3500 Deer Creek Road
Palo Alto, CA 94304

Elon,

The waiver of service form for the lawsuit filed in the Northern District of California is attached. Since you can return the signed Form AO 399 by e-mail for free, no prepaid means of return is necessary.

Aaron

PlainSite | <https://www.plainsite.org>

—

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

“Good cause” does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant’s property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

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ao398-musksigned.pdf
375 KB

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ao399-musk1.pdf
286 KB

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20200520.complaint.pdf
982 KB

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exhibit-a.pdf
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exhibit-k.pdf
492 KB

[Click to Download](#)

exhibit-l.pdf
478 KB

[Click to Download](#)

exhibit-m.pdf
44 KB

Subject: Greenspan v. Qazi et al Supplementary Materials
From: Aaron Greenspan <aaron.greenspan@PLAINSITE.ORG>
Date: 5/21/20, 11:54 AM
To: Omar Qazi <omar@smick.com>, Elon Musk <erm@tesla.com>, Al Prescott <aprescott@tesla.com>

All,

Pursuant to Civil Local Rule 4-2, please see the attached documents.

Aaron

PlainSite | <https://www.plainsite.org>

—Attachments:—

20200521.order.pdf

MJ_Consent-Declination_Form_Jan2014.pdf

Standing_Order_All_Judges_11.1.2018.pdf

JSC-Settlement-Conference-Standing-Order-4.23.19.pdf

JSC-Standing-Order-3.7.19.pdf

Joint_CMC_Statement_-_Proposed_Order_5-1-2018.docx

Subject: Fwd: Waiver of Service Form
From: Aaron Greenspan <aaron.greenspan@plainsite.org>
Date: 6/19/20, 1:52 PM
To: Elon Musk <erm@tesla.com>
CC: Al Prescott <aprescott@tesla.com>

Elon,

A reminder. 30 days from May 21, 2020 is tomorrow. Most recent case documents at <https://www.plainsite.org/dockets/49sdnba14/california-northern-district-court/greenspan-v-qazi-et-al/>.

Aaron

PlainSite | <https://www.plainsite.org>

Begin forwarded message:

From: Aaron Greenspan <aaron.greenspan@plainsite.org>
Subject: **Waiver of Service Form**
Date: May 21, 2020 at 10:22:32 AM PDT
To: Elon Musk <erm@tesla.com>
Cc: Al Prescott <aprescott@tesla.com>

May 21, 2020

Elon Musk
3500 Deer Creek Road
Palo Alto, CA 94304

Elon,

The waiver of service form for the lawsuit filed in the Northern District of California is attached. Since you can return the signed Form AO 399 by e-mail for free, no prepaid means of return is necessary.

Aaron

PlainSite | <https://www.plainsite.org>

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If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

—Attachments:_____

ao398-musksigned.pdf

ao399-musk1.pdf

ao399-musk2.pdf

EXHIBIT B

Receipts from Michelson Attorney Service and FedEx Office

Date	Sale No.
6/22/2020	26306

Sold To
AARON GREENSPAN 956 CAROLINA ST. SAN FRANCISCO, CA 94107

Check No.	Payment Method	Project

[illegible]

MICHELSON ATTORNEY SERVICE
 5776 LINDERO CANYON RD., SUITE
 D-219
 WESTLAKE VILLAGE, CA 91362

Sales Receipt

Date	Sale No.
6/25/2020	26310

Sold To
AARON GREENSPAN 956 CAROLINA ST. SAN FRANCISCO, CA 94107

Check No.	Payment Method	Project

Description	Qty	Rate	Amount
GREENSPAN V. QAZI (5 ADDITIONAL ADDRESS)	5	135.00	675.00
Total			\$675.00

Date	Credit No.
6/25/2020	2666

Customer	
AARON GREENSPAN 956 CAROLINA ST. SAN FRANCISCO, CA 94107	RECEIVED

REFUNDED

[illegible]



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DOCUMENTS IN PROGRESS



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CART 0 ITEMS

Order Confirmation

Questions about your order? Call **1.800.GoFedEx 1.800.463.3339** or Visit the [FAQs](#)

Thank you. Your order has been submitted.

A confirmation email has been delivered to **aaron.greenspan@plainsite.org**, **weserve33@gmail.com**

Order number: **1016677816725374**

Order date: **06/22/2020**

Your order will be ready to pick up by **4:30 PM on Jun 22nd, 2020** at **855 E Colorado Blvd, CA 91101**

You can reach this location at **(626) 793-6336**

[Print your receipt](#)

Your payment information:



[FAQs](#)



Multi Sheet packet.pdf



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Subtotal	\$26.24
Tax	\$2.69
Total	\$28.93

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